

**RESPONSE OF ZEE NETWORK**

**ON**

**DRAFT TARIFF ORDER APPLICABLE FOR  
NON-ADDRESSABLE CABLE TV SYSTEMS**

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES  
(SEVENTH) (NON-ADDRESSABLE SYSTEMS) TARIFF ORDER, 2014  
(NO. \_\_\_\_\_ OF 2014)**

**ISSUED ON 1<sup>ST</sup> DECEMBER, 2014**



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**COMMENTS ON DRAFT TARIFF ORDER APPLICABLE FOR  
NON-ADDRESSABLE CABLE TV SYSTEMS**

1. The Hon'ble Supreme Court vide its Order dated 17<sup>th</sup> September, 2014 in Civil Appeal No's: 829-833 has inter alia observed as under:

*We accordingly dispose of these appeals leaving all questions open for being agitated by the stakeholders as and when the TRAI passes a fresh tariff order in terms of the report prepared by it.*

*We may note the submissions made by learned counsel for the TRAI that since the report was prepared in 2010, there may be a necessity of holding further consultations. In any case, representations may be made by the stakeholders and to the extent possible, the TRAI will attempt to notify the fresh order immediately after 31.12.2014.*

*We make it clear that we have left all questions of law open and also make it clear that the status quo as on today will continue till 31.12.2014.*

*In case any of the stakeholders intend to make representations to the TRAI, they may do so positively within ten days and in any case on or before 30.09.2014.*

- 1.1 In view of the above mentioned observations of Hon'ble Supreme Court and the ground realities prevalent in the Cable TV Sector, TRAI in the present consultation process should have taken into account the practical aspects of the Cable Industry, especially the factors which play a major role in establishing the practices and tariffs in non-Addressable platforms in NON DAS areas. In our considered view, TRAI should have come out with such a draft Tariff Order which could have been in synch with the present norms and practices followed in Non-addressable Cable TV system.
- 1.2 As a matter of record, lot of water has flown through the bridge after the Tariff Order on Cable TV Services in NON - DAS Areas was issued by TRAI on 4<sup>th</sup> October, 2007 – Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order and the views expressed by TRAI in its Report dated 21<sup>st</sup> July 2010. The Draft

Order should have taken into account not only the issues prevalent in the non-addressable systems but also the changes which have taken place on the ground and the circumstances prevailing in the Industry as on 1<sup>st</sup> December, 2014 i.e. on the date of issuance of the present Proposed draft tariff Order. However, it is regretting to point out and as elaborated in the subsequent paragraphs, no serious effort has been made by the Authority to address these issues and the present Tariff Order is proposed to be notified in a mechanical manner without making even an attempt in that direction by erroneously presuming that as on date the market dynamics are more or less the same as that prevailed at the time the consultation process 2009-10 was carried out.

- 1.3 TRAI itself had admitted in its Report of 21<sup>st</sup> July 2010 that “The last five years have changed the dynamics of the market significantly. There are around 200 Broadcasters, 24 Aggregators, 550 television channels, 6,000 Multi System Operators (MSO’s), up to 60,000 Local Cable Operators (LCOs), 7 DTH /Satellite TV Operators and several IPTV service providers”.

At present, the above numbers have undergone substantial change and there are around 350 Broadcasters, 810 channels, and thousands of MSO’s and LCO’s which itself reflects that there is more than adequate competition and it is an appropriate time for Cable System TV in India to adopt forbearance so far as the tariff is concerned.

### **ISSUE OF SUBSCRIBER BASE NOT ADDRESSED**

2. It may be pointed out that the total revenue earned by an entity is the function of two factors – number of units (subscribers) and the rate per unit (subscribers). The surprising part of this Draft Tariff Order is that there is no discussion whatsoever on the methodology of determination of actual subscriber base in non-DAS areas which is one out of the two important variables in the value chain. The most contentious issue in the non-DAS area is the determination of actual subscriber base. At present there is complete non-transparency so far as the actual number of subscribers being served by LCO in non-DAS areas. Any tariff exercise done in isolation without addressing the associated issue of the subscriber number would be futile and will not serve the objective desired to be achieved.

- 2.1 The attention in this regard is invited to:

- (i) the order of Hon'ble TDSAT dated 15/1/2009 wherein at para 84 the Hon'ble Tribunal has observed the following :

*“84. With these findings, we set aside the Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4.10.2007 of the Telecom Regulatory Authority of India. **We direct the TRAI to study the matter afresh in the light of our observations and issue a comprehensive Order covering all aspects including the issue of subscription base in a non-addressable system.** We expect the Authority to complete this Study in six months for which they may call for such relevant information as is required from the service providers. We also direct all the service providers that non-cooperation in this exercise including non-furnishing of information will be viewed as a violation of this Tribunal's orders”.*

- (ii) the order dated 13/4/2009 passed by Hon'ble Supreme Court on the appeal filed by the Authority against the judgment of TDSAT dated 15/1/2009. The relevant part of the order is reproduced below:

*“In supersession of the order passed by this Court on 13.04.2009, the following may be read:  
**By the impugned order, TDSAT has directed TRAI to study the matter afresh and issue a comprehensive order covering all aspects including the issue of subscription base in a non-addressable (sic) system.** Learned senior counsel appearing for the TRAI stated that a revised study would be completed within a short period after hearing the parties at the earliest. **The TRAI may however consider the matter de novo as regards all aspects and give a report to this Court by 11<sup>th</sup> August 2009.** All parties are directed to co-operate with the TRAI so as to enable them to file a report at the earliest. The TRAI shall also consider the feasibility of putting a cap on carriage and placement charges.....”*

A perusal of the above would reveal that both Ld. TDSAT and Hon'ble Supreme Court have directed the Authority to address the issue of subscriber base while considering the matter *de novo*. As pointed out hereinabove, it is reiterated that there is

no attempt whatsoever on the part of Authority to also consider the subscriber base issue and the focus all along has been on the fixation of tariff/rate ceiling for pay channels. Thus, the said exercise suffers from serious infirmity in as-much-as the fixation of tariff without addressing the issue of other variable – subscriber base would render this entire exercise grossly incomplete and half-baked.

2.2 From the figures available in public domain it is evident that both the MSOs and the broadcasters are getting a very small fraction of the revenues which are being collected from the subscribers. Most of the revenues are retained by LCOs through low declaration. Consequently MSOs report much lower revenues than would be evident from the real customer base they should be serving, and consequently most of these revenues go for broadcaster payouts leaving practically nothing for them. The Broadcaster also gets a very small fraction (12% to 13%) of total revenue collection.

2.3 While the Cap in pricing which is prescribed by TRAI ( Non-DAS Area Pricing) at around Rs 200-225 may seem a customer friendly move, the fact is that DTH today offers lower pricing with greater transparency and quality. This is precisely the reason that DTH is acquiring increasing market share day by day. It may be mentioned that the average ARPU of the DTH is around Rs. 170-180 and DTH platforms already have about 44 million subscribers.

The high profits realized by LCOs by keeping the networks analog are also having an impact on the digitalization of the industry as the LCOs are not at all interested in moving to a higher declaration. This is going to adversely impact the Cable Sector in the long run as there is every likelihood of the subscribers migrating to the alternate technologies offering better quality as well as affordable pricing.

2.4 The very reason why the average price cap of Rs 200 was fixed in the first place in 2007 was the monopolistic nature of the cable networks and consequent fear that the prices charged from customers will be exorbitant. This indeed appeared to be the case initially when the cable prices in Metro cities such as Bombay touched Rs 350 – 400. However the situation has since changed and customers have a choice now through DTH which is available through six operators at tariffs ranging from Rs 70-350 per month based on channels selected.

It is thus evident that the Non-DAS pricing policy has outlived its utility and is in fact proving to be a barrier to the digitalization of the industry. The prevalence of carriage fees is the result of inability of MSOs in generating sufficient revenues from Pay channels to a large extent. However broadcasters are willing to pay much higher fees to DTH operators due to better declaration. Moreover the phenomenon of carriage fees is itself a result of limited capacity of 60-70 channels on analog systems and in most cases result in carriage of channels which the customers may not be interested in watching. These may include newly launched channels which are trying to gain market, channels with external funding or religious channels. In Digital cable systems which can carry over 300 channels, the impact of such carriage is greatly reduced as the customers have sufficient choice.

- 2.5 To this extent the Zee Network would recommend examining the impact of removing the price caps as these are now proving to be inimical to the interest of the entire industry. This will result in better quality of channels being delivered on the networks and lower resistance to digitalization. If the price caps are continued, alternative media such as DTH will come to dominate the entire industry as MSOs can no longer support such a structure.

### **TARIFF FREEZE NO LONGER REQUIRED - FORFEARANCE IS THE WAY FORWARD**

- 3.0 Zee Network is of the view that the existing price freeze on the tariffs of pay channels in non-DAS areas is no longer necessary as it is hampering the growth of the broadcasting sector. The tariff freeze was initially introduced by the Regulator as a temporary measure. The TRAI itself in its Recommendations dated 1/10/2004 has observed

*“It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through effective competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct reviews of the extent of competition and the need for price regulation in consultation with all stakeholders.”*

- 3.1 It is our submission that existing tariff regime in which the rates have been frozen is causing huge revenue losses to the broadcasters. The cost of programming for example sports, movies and general

entertainment depends to a large extent on the type of content acquired or rights of telecast obtained from time to time and placing a cap of pricing can hinder a channel from going in for new programming which could only be supported by hike in subscription. It is pertinent to point out that the input cost for the broadcasters is continuously increasing in the form of increase in the cost of procurement of programmes from production houses, increase in the cost of IPR procurements, phenomenal increase in the cost of movie rights, increase in overhead costs, operational costs in the form of hiring of transponders etc. events rights and sports broadcasting rights etc. This has resulted in total imbalance as the broadcasters have to absorb all these increased costs themselves. This has caused significant dent in their revenues.

- 3.2 In this regard it is also pertinent to mention that in certain recent judicial pronouncements pertaining to DTH, the rates chargeable from DTH platforms have also been linked to the prevalent cable prices. This has caused considerable hardship in-as-much-as since the cable prices are frozen, the corresponding derived DTH prices from these cable prices are also in a manner stands indirectly frozen.
- 3.3 Zee Network is of the considered view that the rate regulation and price controls distort the market and lead to misallocation of resources. Artificially low prices deter any further investment in new channels & programming which in turn affects consumers' choices because of shortage of quality channels and lack of variety in programming. In this regard it is useful to refer to the extract of the Explanatory Memorandum to the Tariff Order dated 1/10/2004 which reads as under:.

*“Fixation of price charged for new pay channels to consumers is difficult because of large variations for these prices **and of the difficulty in linking these to costs.** Further, this is a localized issue which is not easily amenable to centralized regulations. Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. Many of these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnect agreements more transparent.”*

Thus TRAI itself has acknowledged that it is not possible to determine an appropriate price for a channel because of lot of variable and complexities involved in undertaking the said exercise.

- 3.4 In this context, we would like to point out that there have been significant development and changes both at the content level as well as on the carriage side. More and more channels of different genres such as entertainment, news & current affairs, sports, life styles, infotainment etc. are available to the Indian consumers and in fact more channels are likely to be launched in the coming months. Accordingly, ample choice is available to the consumers in terms of content in each genre. Approximately 800 channels of different genres are available to the Indian consumers. Availability of such a high number of channels in the market ensures that no individual broadcaster can dominate the market. The competition is so intense in the market that in case a broadcaster tries to take the advantage of its market position by following anti competitive practices, the consumers always have option to switch over to alternate product (channel).

**In view of the detailed submissions made hereinabove we are of the view that there should be a total forbearance of tariff in non-DAS areas.**

**MARKET IS COMPETITIVE - REGULATION OF TARIFF NOT WARRANTED**

- 4.0 The market is mature enough to reach its equilibrium level. The continuity of price regulation & controls will not only distort the market but will also lead to downgradation of quality of services and reduction of investment in the sector. It is to be noted that selling the channels at low prices will discourage any further investment in new channels and programming which is bound to affect the consumer choice and creating a shortage of quality channels and variety in programming content.
- 4.1 Since market is mature and the economic principal of equilibrium has made its inroad into the industry, if any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the channel is under priced, the market forces will effect necessary correction based on its demand & popularity by increase in price. Hence no economic rationale exists for placing price controls.
- 4.2 In fact, under the free market conditions of competition, the cable television market has grown rapidly and a wider choice approx 100-



125 channels of different genres is available to consumer at less than Re. 1 per day per household in non-DAS areas. If the price controls are persisted with, it will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved towards deregulation of their cable television industries, thereby choosing to remove any restrictions on pricing.

- 4.3 As already submitted hereinabove the market forces should be allowed to operate freely which would ultimately self-regulate the system and optimum level price would be achieved. So far as the checks & balances are concerned, the TRAI can have a continuous monitoring of the market and can also initiate a system of regular reporting of pay channel prices by various broadcasters. If TRAI at any stage is of the opinion that market forces are not be able to throw up the appropriate level and in fact the interest of subscribers is being compromised, it can immediately intervene and effect necessary corrections.
- 4.4 The TRAI has statutory power to regulate if the deregulation results in creation of some kind of imbalance in the market to the detriment of consumers. The fact that there is an intense competition on the ground and coupled with the reality that Regulator can intervene as & when the market tends to behave erratically, in our opinion are effective deterrents in preventing the broadcasters from acting in a whimsical manner to the detriment of consumers at large.

#### **DIFFERENTIAL PRICING AT THE RETAIL LEVEL**

5. Yes, the prices per month at the retail level differ vastly from one operator to another. We would like to reiterate that on an all India level the retail prices vary from Rs. 120 to Rs. 350 depending upon the paying capacities of various segments of Society. Subscribers at different strata of the society have different requirement and capabilities to pay. For e.g a high end customer would prefer a choice comprising of all Movie channels/Sports channel and would be willing to pay the requisite price for the same which would not be the case for a subscriber living in a slum or belonging to a low income household. Hence, there are variations in content, packages and service levels in the Television Industry which also indicate level of competition growing day by day with DTH players making inroads in the domain of Cable Operators.

## **INCIDENCE OF CARRIAGE AND PLACEMENT FEE**

- 5.1 The present Draft Tariff Order does not address the issue of carriage and placement fee which is a practice prevalent in analogue sector and is badly hurting the revenue of the Broadcasters.

There are capacity constraint of analogue cable, whereby it can carry about 70-80 channels in analogue mode (in a market where more than 650 channels are present) which has resulted in the incidence of carriage and placement fees. The Broadcasters are forced to shell out substantial amounts in order to make sure that their channels are placed in visible bands. This has resulted in phenomenal escalation of the distribution cost over the last 4 to 5 years. Although the Regulator has identified carriage and placement fee as a problem area, it needs to identify a solution which would rationally address the interest of all the stakeholders. There is not even a whisper about the same in the present Draft order despite the fact that in one of the hearings the Hon'ble Supreme Court specifically directed TRAI to address the said issue and had also passed an order to that effect.

## **INCIDENCE OF STATE AND REGION BASED MONOPOLIES –**

- 5.2 To detect and control monopolistic situations in certain states and region, the industry requires a well defined framework through which information can be gathered and analysed on continuous basis to arrive at meaningful conclusions. In the present scenario analogue system does not provide a mechanism for gathering and analysing data to identify incidences of state and region based monopolies. It is the shortcoming of the analogue system which cannot be sorted out through tariff regulation. However there are certain regions where there are visible monopolies which have destroyed the competition both in content and carriage segments.

## **FREQUENT DISPUTES AND LACK OF COLLABORATION AMONG STAKEHOLDERS**

- 5.3 The major reason for frequent disputes between stakeholders is non availability of authentic reliable data. Every stakeholder is aligned to a different subscriber base which in turn results in variation in content cost, carriage fee and pricing. This eventually leads to inefficiency and not only impacts growth of the industry but also the interest of the consumer. It is high time the Authority realises that the root cause of all ills is the non-addressability. In order to bring in sanctity to the

numbers of subscribers declared by the MSO's it is inevitable that the Authority introduces addressability by way of mandating that digitalisation in all cases must be accompanied by addressability. It would be a fallacy to believe that fixation of tariffs in NON DAS areas would overcome the perennial problem of under declaration and non availability of reliable data on subscribers at large. Thus, without addressing the basic issue of subscriber numbers, which is one of the components of revenue, addressing tariff/rates in isolation will not serve the desired purpose.

***To summarize the Zee Network would like to recommend a complete removal of ceiling of cable TV pricing in non-DAS areas. We believe that this step is necessary for the industry to grow as against the present situation where 80% revenues are lost due to non-transparency of the system***

**VOLUNTARY DIGITALISATION IN TERMS OF CLAUSE 4 AND 5 OF PART II AND III OF THE DRAFT TARIFF REGULATION - LACK OF MONITORING MECHANISM FOR ADDRESSABLE CABLE TV SYSTEM IN NON-ADDRESSABLE AREAS**

- 6.0 With the technology being easily available, Multi System Operators (MSO's) in Non-Addressable areas are voluntarily providing digital signal using digital addressable systems using the backbone of carriers like Railtel to transmit signals across different Geographical locations in the country through one single Headend. This in fact is not a fool proof addressable system whereby a Broadcaster can monitor the exact number of subscribers serviced by any MSO/ cable operator. Mere certification that the STB's are BIS compliant by BECIL should not be a criteria to allow MSO's to operate as DAS operators in Non-Addressable areas.
- 6.1 The Proposed Tariff Order by way of explanation to Clause 4 as well as Clause 5 provides that the provisions of Telecommunication (B &C) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) shall apply to the Broadcasting and Cable services being provided to the consumers through the addressable systems.
- 6.2 It is also pertinent to point out that in spite of the fact that Two (2) years have lapsed after digitalisation has been notified in the country in different phases, the Subscriber Management System (SMS) of quite a few MSO's are not in place and the Broadcasters do not get a true and correct count of subscribers serviced by such MSO's. In our view

when DAS implementation till date is not fully compliant it would be disastrous to think of allowing voluntary Digitalisation in Non Das areas. Any such move would result in tremendous loss to the Broadcaster as on one hand in absence of a true and correct disclosure count of subscribers (under disclosure) coupled with restricted rate @ 42% of the NON-ADDSSABLE rate would result in a sharp and undue drop in the revenue for the Broadcasters which amounts to double jeopardy for the Broadcasters.

6.3 In this regard, it is submitted that the Authority should consider the following:

- (a) TRAI has not yet notified the amendment whereby it had proposed to levy fines and penalties on MSOs/LCOs for default in issuing bills/receipts to the subscribers as per their SMS systems. Despite the expiry of about two years, the SMS systems of the MSOs are not in place. The said clause (which is an explanation) should be incorporated only if the amendment under reference regarding the penalties/fines termed as “financial dis-incentives” be notified immediately.
- (b) TRAI should categorically clarify that the provisions of Telecommunication (B&C) Services (Fourth) (Addressable Systems) Tariff Order, 2010(1 of 2010) would only apply where the system installed by MSO is fully addressable (voluntary DAS). In other words, the provision provided in the Explanation to Clause 4 & 5 would only apply where the number of subscribers receiving channels is clearly ascertainable from the SMS systems maintained by MSOs. The said provision should be clarified by TRAI by way of stipulating a necessary provision in this regard that where the MSO is effecting digital delivery i.e. the signals are being provided through STBs, the system must be addressable and should meet the prescribed specifications laid down by in the TRAI Regulations and the addressable system should be certified by BECIL.

Therefore the draft Tariff Order needs an amendment on the above lines in Clause 4 and 5 in Part II and part III respectively of the proposed draft Tariff Order issued by TRAI on 1<sup>st</sup>December, 2014.

## **REPORTING REQUIREMENTS ONLY FOR BROADCASTERS**

7. According to clause 8 in part V of the said Draft Tariff Order, the Broadcasters' are required to furnish wide variety of information to the Authority which even includes the information of Commercial confidence like revenue share arrangement between owners of channels in the Bouquet and Advertisement revenue for the last three financial years. The above obligation of reporting is onerous which not only increase the cost of compliance without having any value addition for the Broadcaster but will also result in exposing the confidential commercial information to the competitors. Further the Authority is not concerned with the advertisement revenue being earned by the Broadcasters. We fail to understand the logic/purpose of stipulating this requirement and therefore vehemently oppose this both on grounds of confidentiality as well as relevance.

Further, the draft tariff Order should be modified by introducing reporting obligations for the MSO's. All the reporting requirement to be fulfilled by the Broadcaster, the authority should also introduce amendment to make it obligatory for the MSO's to furnish reports on similar lines covering information of commercial confidentiality to the Authority. In addition, for example the Broadcaster's representative should also be allowed to inspect, audit and verify the Receipts issued by the MSO's to its subscribers.

## **REPORTING REQUIREMENT IN RESPECT OF CONVERSION AND DISCONTINUATION OF CHANNELS**

- 7.1 As per clause 8 (2) in part V of the draft Tariff Order it has been provided that in case of launch of a new Pay channel and/or in case of conversion of FTA to pay channel relevant intimation should be notified to the Authority one month before such change or launch of a new pay channel by the Broadcaster. However, at present all such changes/launch of new channel is to be declared to the Authority within 7 (seven) days of such launch or change. It is not explained either in the Consultation Paper or in the Explanatory Memorandum as to why the existing stipulations are being amended. In our view, this will cause practical hardship and such change is not warranted and the same will not serve any purpose. Therefore, the earlier stipulation of 7 (seven) days should be restored.

## **RETAIL PRICE FIXATION.**

8. Forbearance should be the option adopted for regulating the Retail tariff in NON DAS areas and the pricing of channels should be left to the market forces. In our opinion, there is no need for tariff regulation for Retail level at this present juncture. It is further submitted that the Retail tariffs of pay channel payable by Subscribers to MSO's/LCO's for such channels should not be regulated in view of the competitive environment prevalent in the market, the evolving industry structure, the present level of penetration of the service, future potential for penetration in rural and remote areas.

8.1 It is to be noted that the fierce competition present in the market shall ensure that the broadcasters do not increase the price of popular channels arbitrarily. In case any broadcaster does increase the price of a channel arbitrarily then the demand/viewership of that particular channel will go down and with that also the Advertisement revenue which also forms a significant chunk of the broadcaster's revenue. The rating of various channels change with the ever dynamic preferences of the subscribers. This shows that there is enough variety and competition prevalent in the market and people are able to make the intelligent choice of shifting the viewership from one channel to another channel depending upon its popularity. Therefore forbearance should be the option for regulating Retail tariff.

## **RETAIL TARIFF CEILING LINKED TO NUMBER OF CHANNELS STIPULATED IN CLAUSE NO: 4 READ WITH THE SCHEDULE TO THE DRAFT TARIFF ORDER**

9. We would not recommend a minimum number of FTA/pay channels to be prescribed as it is a known fact that the analogue system has a limited channel carrying capacity. It would be unfair to Broadcasters if the ratio of FTA channels to Pay channels is mandated/regulated by TRAI. In an analogue environment, all the channels whether FTA or pay are delivered in free to air form through a single pipe to a consumer. Thus the distinction between FTA and pay channel remain only upto MSO level. For the subscribers, since a lump sum amount is paid for the various channels irrespective of the number of FTA channels and pay channels comprised in the bundle delivered to him, there is no rationale for prescribing the ratio between pay and FTA channels or minimum number of FTA/pay channels.

9.1 The Broadcasters are already shelling out huge amounts as carriage charges and placement fees. Any move to introduce a ratio between Pay and FTA channels would put the broadcaster to a disadvantage from the revenue point of view. By prescribing a mandatory minimum number of FTA channels would result in additional cost for the Broadcasters who would be forced to pay higher carriage/ placement fees in order to make sure that their channels are placed in platform on a visible band.

9.2 Mere prescription of minimum number of FTA channels and pay channels is not going to serve the desired purpose. The question would be which pay channels and which FTA channels? What would be the basis for selecting the pay channels to be included in the service and carried by the cable operator? How the regional preferences and linguistic preferences would be taken into account?

Moreover, who will decide which channel will go as a FTA in which area. Within a city there are multiple choice groups, for instance in Delhi a locality in South Delhi may need Bengali channels as FTA channels, whereas a locality in West Delhi may need North Indian channels. Therefore, an empirical formula may not work and thus will drive the costs to the broadcasters and consumers to the higher level and middle man enjoying the same.

9.3 There would be a tendency on the part of the cable operator to include the lesser priced pay channel as well as less popular pay channels into the service tier and demand exorbitant carriage fee from the other broadcasters who wish their channels to be carried. This would cause further financial detriment to the broadcasters who are already reeling under the heavy burden of carriage fee.

9.4 It would also lead to the customers facing serious viewership issues viz.

(a) Premium channels such as Sports or premium Cinema will not be accommodable in the pricing.

(b) Cable operators and MSO will charge carriage fees as customer preferences as suggested by us above will not be a consideration in selection.

(c) There will be less room for premium high quality channels and more channels with carriage fees will occupy the cable system.

Hence the prescription of overall ceiling based on just numerical numbers of FTA and pay channels being shown is not proper at all. It is the quality of the channel rather than the quantity of the channels being distributed which should determine the pricing. It should be remembered that the attempt is being made not only to prescribe ceiling for carriage but also on content which in our opinion is highly arbitrary and unjust.

### **GENRE BASED PRICING AND SIMILARITY PRINCIPLE**

10. In Clause 7 of the Tariff Order the TRAI has prescribed by way of proviso that the Broadcaster shall declare the genre of its channels as one of the specified 11 genres. By way of a further proviso it has been provided that in determining the similarity of rates of similar channels, the following factors shall be taken into account:

- (i) The genre and language of the new pay channel or converted free to air to pay channel; and
- (ii) The range of prices ascribed to the existing channels of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that exist.

10.1 In this regard it is stated that the "similarity principle" is a fallacious concept as the channels which are in the same genre or are "similar" in fact have widely varying characteristics and can never be compared. It will be atrocious to put a price cap on three sports channels which have rights to different sports. Similarly a regional GEC or a news channel gets pricing power based on viewership and not based on its genre or "category".

10.2 Without prejudice, it is stated that it is entirely irrational and illogical to ask the Broadcasters to fit the category of their channels in one of the genres specified by the Authority even when the content of the channel is such that it cannot be categorized under any of the specified genres. As the Broadcasting Sector is quite dynamic, the channels with niche content are being launched by the Broadcasters. It is neither fair nor rational to apply the "similarity principle" to these channels when their content is totally different and not at all similar to any of the existing channels classified under 11 genres stipulated by the Authority. The example of such channels are "Educational Channels", "Cookery Channels", specialized "Sports Channels" such



as Golf which have niche viewership etc. Accordingly, the mandatory nature of categorization stipulated by the proviso be amended and/or the channels with niche content and the channels the content whereof is not similar to any of the channels in the existing genre be exempt from applicability of both the proviso to Clause 7 of the Tariff Order.

**REPEAL AND SAVING - Increase of 15% plus 12.5 % permitted by TRAI w.e.f 1<sup>st</sup> April 2014 and 1<sup>st</sup> January 2015 vide Tariff Order dated 31<sup>st</sup> March 2014 – The Telecommunication (Broadcasting and Cable) Services (second) Tariff ( Eleventh Amendment) Order, 2014 should not be repealed in the proposed Tariff Order - Part VI**

11. In the above referred Tariff Order dated 31<sup>st</sup> March 2014 which deals with the inflation related hike, TRAI had expressed the view that though as per the calculations stated in the Tariff Order the inflationary hike of 27.5% is due, such a hike of 27.5 % in a single go would not be appropriate for the market; consumers need some time to adjust. Therefore, the Authority had decided that this hike should be implemented in two instalments. The first instalment of 15% shall be effective from 1<sup>st</sup> April 2014 which has been incorporated in the said Tariff Order dated 31<sup>st</sup> March 2014. The TRAI had stipulated that the Second instalment for remaining inflation linked increase, for the period from December, 2008 to March 2014 shall be made effective from 1<sup>st</sup> January 2015 through a separate Notification/Tariff Order to be issued subsequently. This was expected to give enough reasonable time to all the stakeholders to adjust to these hikes.

Now, it appears from the draft proposed Tariff order – part VI ( Repeal and saving) that earlier Tariff Orders are sought to be repealed which in effect would mean also the repeal of the 31<sup>st</sup> March Tariff Order. In this context, it may be noted that TRAI has already factored the increase of 15% in the present Draft Tariff Order. Since the second instalment of 12.5% is due on 01.01.2015, it would be most desirable and in fact most appropriate to notify the said increase of 12.5% in the present Tariff Order itself. In the alternative, it should be ensured by modifying the present Draft that any changes proposed in the present Tariff Order should not result in nullifying or cancelling the announcement made by TRAI relating to inflation related hike of 12.5 % w.e.f 1<sup>st</sup> January 2015.

In view of the above, we once again reiterate that the data/submissions made by TRAI in its Report dated 21<sup>st</sup> July, 2010 to the Supreme Court are almost five years old and the Cable Industry in India has evolved due to its

inherent dynamic nature. Hence, it is recommended that there should no ceiling on Tariffs applicable for Cable System TV in Non-Addressable areas and the market forces should be allowed to operate freely and there should be complete forbearance at all levels. We would also like to mention that the proposed Tariff Order seeks to regulate only the Broadcasters and various other associated issues which are quite critical for the sector have been left unaddressed.

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